

August 21, 2019

Mr. Charles Long
General Counsel
St. Paul Public Schools
360 Colborne St.
Saint Paul, MN 55102

Re: Violation of the PEIP statute

Dear Chuck:

I am in receipt of a letter that the District sent to Nick Faber, president of the St. Paul Federation of Educators, on August 16, 2019, concerning the Federation's determination to enter the Public Employee Insurance Program. In that letter, the District indicates that it is refusing to execute a notice to the Commissioner of Management and Budget at this time. The letter further suggests that the District will pursue assorted causes of action against the Federation should it seek entry into PEIP. Suffice it to say, the Federation has a very different view of the District's obligations and of the legal implications of its entry into PEIP.

As the District's correspondence indicates, the Federation provided notice to it of the Federation's determination to participate in the PEIP program on May 14, 2019. The District acknowledged this notice as complying with the requirements of Minn. Stat. § 43A.316. Nevertheless, the District has, thus far, refused to issue a joint notice. The District's letter does "fully commit" to executing a notice at a time of its choosing in the future, but the Federation has received no such notice at this time.

The Legislature has created a right for members of an exclusive representative to select PEIP as their insurer. District employees may exercise this right without restraint or the exercise of discretion by the District:

(b) Each exclusive representative for an eligible employer determines whether the employees it represents will participate in the program..."

Minnesota Statutes § 43A.316, subdivision 5(b) (2018) (emphasis added). It should go without saying that the District's refusal to execute a joint notice to the Commissioner prevents employees from participating in the program, thus rendering the Federation's determination a nullity.

The other thing that should go without saying is that "fully commit[ing]" to undertake an action is not the equivalent of undertaking the action. The requirements of Minn. Stat. § 43A.316 are

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not satisfied by abundant enthusiasm alone. The statute states that:

The exclusive representative and the eligible employer shall give notice to the commissioner of the determination to participate in the program at least 30 days before entry into the program.

Id. As your client has acknowledged, the Federation has determined that its members will participate in PEIP starting January 1, 2020. Nothing in the statute provides the District with the option of determining that the Federation's members will not enter on that date.

If the District is intent upon violating the plain language of Minn. Stat. § 43A.316, the Federation's only option is to compel it to discharge the duty required of it by that law. A draft writ of mandamus is attached hereto. In the absence of a satisfactory resolution of the dispute currently before us, we will be filing this.

Furthermore, the Federation does not believe that any of the claims listed in the District's August 16, 2019 letter have merit or relevance to the current matter. The Federation's members are availing themselves of a statutory right. The District has not pointed to a single instance of wrongful conduct on the part of the Federation or its members. Similarly, the District has not identified any instance in which the Federation promised not to avail itself of its right under Minn. Stat. § 43A.316. As such, the claims that the District has identified would not be warranted by existing law or any argument, frivolous or otherwise, for its extension, modification, or reversal.

Finally, the Federation was surprised by the District's assertion that it was bargaining in bad faith, because the Federation does not have to negotiate over its entry into PEIP at all. The statute gives it an unfettered right to do so. The Federation remains committed to resolving this matter amicably and hopes that the District decides that it is as well. To that end, the Federation reiterates its willingness to craft a negotiated settlement of our dispute. We are willing to enter into mediation in order to do so. If the District is also willing, it will make litigation unnecessary.

The Federation proposes that the parties meet for mediation no later than Friday, August 30, 2019. Although this is a quick timeline, the parties are working against the deadlines created by the commencement of open enrollment. In order to ensure an orderly open enrollment period, we need to resolve this matter as soon as possible. Indeed, now that you have put a halt to the logistical meetings regarding the implementation of the Federation's determination to go to PEIP, time is truly of the essence. I look forward to hearing from you no later than Friday, August 23, 2019.

Sincerely,
s/Meg Luger-Nikolai
Meg Luger-Nikolai
Attorney